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## Q3 2020: Latin American Enforcement Review

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### DOJ Enforcement in Latin America Continues Despite Pandemic

During the 3<sup>rd</sup> quarter, the Department of Justice made a number of high-profile arrests and concluded plea agreements in several cases related to Latin America.

The most prominent came on July 6, 2020, when the DOJ announced that it had arrested and charged the sons of Panama's former president, Ricardo Martinelli, who is himself facing corruption-related charges in Panama. His two sons, Luis Enrique and Ricardo Alberto Martinelli, are charged with facilitating \$28 million in bribes from Odebrecht to Panamanian officials.<sup>1</sup> They were arrested in a Guatemalan airport at the request of the U.S. government, which is now seeking their extradition.<sup>2</sup> A Guatemalan court has granted the extradition request, and the Martinelli sons are currently appealing that decision.<sup>3</sup>

A month later, on August 6, 2020, DOJ unsealed charges against Jose Luis De Jongh Atencio, a procurement manager at a Houston-based subsidiary of Venezuela's state-owned energy entity, Petróleos de Venezuela S.A. (PDVSA), for accepting bribes to facilitate business with PDVSA and its subsidiary, and then laundering the money.<sup>4</sup> These charges are part of a larger ongoing investigation into bribery at PDVSA. This investigation has already produced charges against 27 individuals, 20 of whom pleaded guilty.<sup>5</sup>

These cases signal that DOJ enforcement has not been diminished by the pandemic and that DOJ has continued to cooperate with governments in Latin America. Indeed, as of October 2020, FCPA-related settlements are the third highest DOJ has ever recorded – \$2.66 billion<sup>6</sup> – and come from companies headquartered across four different countries, and six different industries.<sup>7</sup>



## THE END OF OPERATION CAR WASH IN BRAZIL?

In its six-and-a-half-year history, Operation Car Wash has resulted in over 200 convictions,<sup>8</sup> including that of former Brazilian President Lula da Silva,<sup>9</sup> the recoupment of billions in bribes paid to public officials,<sup>10</sup> and parallel investigations, most notably into Odebrecht's alleged money-laundering scheme involving dozens of officials across Latin America and the Caribbean.<sup>11</sup> But only one month after Brazil's Attorney General announced that Operation Car Wash would be extended through January 31, 2021,<sup>12</sup> Brazilian President Jair Bolsonaro declared that corruption in Brazil has been eradicated and that Operation Car Wash will come to an end.<sup>13</sup>

Whether Operation Car Wash will truly end is an open question, as reports suggest that Brazil's prosecutors are pursuing enforcement actions at their usual pace. At the end of September, President Bolsonaro's son was charged with embezzlement, money laundering, and running a criminal organization.<sup>14</sup> A major investigation into the alleged laundering of public funding to battle COVID-19 has also ensnared public officials.<sup>15</sup> Prosecutors are even bringing new charges against defendants in connection with Operation Car Wash – for example, former Seadrill Ltd executive, Eduardo Antonello, was charged with bribery.<sup>16</sup>

Regardless of what becomes of Operation Car Wash in Brazil, its effects will continue in other countries. Brazil received over 600 cooperation requests from foreign governments to help in related investigations; those requests do not appear to be ending soon.<sup>17</sup>

## MEXICO'S ANTI-CORRUPTION EFFORTS

More high-ranking Mexican officials are now facing allegations of corruption. Former Pemex executive Emilio Lozoya was extradited to Mexico from Spain, and he has claimed that former Mexican President Felipe Calderon accepted bribes to greenlight an Odebrecht-petrochemical plant project in Veracruz.<sup>18</sup> Lozoya also claimed that President Enrique Peña Nieto and former Finance Minister Luis Videgaray ordered him to funnel more than \$4 million in bribes from Odebrecht into Peña Nieto's presidential campaign.<sup>19</sup> Lozoya contends that between 2013 and 2014, Peña Nieto and Videgaray also bribed legislators to obtain approval for certain reforms.<sup>20</sup>

These allegations have put a spotlight on President Andrés Manuel López Obrador who repeatedly promised to have zero tolerance for corruption.<sup>21</sup> López Obrador signaled he would deliver on that promise by asking the Senate and Supreme Court to back a referendum calling for the investigation and potential prosecution of his predecessors; both bodies gave the referendum their approval.<sup>22</sup> López Obrador has also proposed amending the constitution to eliminate immunity for sitting presidents.<sup>23</sup>

Much to the chagrin of legal experts, López Obrador has also publicly called for the release of video evidence allegedly showing former legislators accepting cash bribes. This decision could put at risk the government's ability to prosecute the case on procedural grounds.<sup>24</sup> Experts have questioned whether López Obrador's tactic is targeted more toward political goals.

In any event, the Mexican people will have the opportunity to vote on López Obrador's anticorruption plan now that he proposed holding the referendum during the summer 2021 midterm elections. If the people vote to investigate and prosecute former Mexican presidents, it remains to be seen whether Mexico's anti-corruption institutions will have the resources to do so, and how that will affect Mexico's overall efforts to investigate and prosecute corruption.

## PERUVIAN GOVERNMENT IN TURMOIL ATTEMPTS ANTICORRUPTION ENFORCEMENT

The Peruvian government is forging ahead with efforts to rein in corruption and hold officials accountable. In August, the Peruvian Congress voted to create a commission to investigate corruption in Peru's construction sector dating back to 1990.<sup>25</sup> It will have the authority to call witnesses, issue subpoenas, and access bank records.<sup>26</sup> But critics question



whether the committee will be effective in investigating 30 years of corruption in a span of 6 months during such a tumultuous period in Peruvian politics.<sup>27</sup>

This new committee is only one of many aggressive actions Peru has taken to investigate and prosecute public corruption. Prosecutors have already charged four former presidents<sup>28</sup> with accepting \$20 million in bribes from Odebrecht, and congress has very recently voted to impeach and remove the sitting president for alleged corruption.<sup>29</sup>

These actions were taken in the middle of bitter fighting between the now-former President Martín Vizcarra<sup>30</sup> and a legislature hostile to his anticorruption efforts. Vizcarra had to use procedural mechanisms to force the congress to vote on constitutional amendments that would, among other things, ban persons convicted of serious crimes from seeking office, criminalize illegal funding for political parties, require open internal party elections, and pave the way towards removing immunity for members of congress.<sup>31</sup> Some measures passed in July, but furor erupted after it was revealed that the congress inserted an exception in an immunity-related bill for actions involving the performance of congressional duties.<sup>32</sup>

But former President Vizcarra's aggressive push may have added to the instability. Weeks after the vote on his anticorruption efforts, former President Vizcarra was accused of instructing his aides to cover up meetings with the Peruvian singer, Richard Cisneros, better known by his stage name, Richard Swing, in an investigation into \$50,000 in government contracts paid to Cisneros for motivational talks.<sup>33</sup> Following these accusations, the congress held an unsuccessful impeachment vote against Vizcarra in September. To add to Vizcarra's difficulties, allegations emerged in October that he accepted bribes from a construction company when he was a governor.<sup>34</sup> Finally, on Monday, November 9, 2020, Peru's Congress voted to impeach and remove President Vizcarra citing a host of reasons, including corruption allegations, the economic crisis, and management of the pandemic.<sup>35</sup>

Given the chaotic environment in Peru, it is unclear how successful ongoing efforts by enforcers will be to ferret out corruption.

### PANAMA CONFRONTS CORRUPTION AT THE HIGHEST LEVELS OF GOVERNMENT

In August, National Security Agency officials from the United States and the Panamanian President, Laurentino Cortizo, announced an agreement to create an anti-money laundering task force. The two countries agreed that the FBI would provide training to prosecutors, law enforcement, and other regulatory officials in ways to "target money laundering networks, including non-narcotics related networks, and strengthen capacity to investigate, disrupt and prosecute money laundering and corruption."<sup>36</sup>

This agreement comes after various high-profile arrests for corrupt acts in Panama. Among other high-profile actions, former President Ricardo Martinelli was charged in the "New Business" case for allegedly laundering public funds in a scheme to purchase a publishing group.<sup>37</sup> Separately, his two sons, Luis Enrique and Ricardo Alberto Martinelli, were arrested and charged in Brooklyn in the Odebrecht investigation.<sup>38</sup>

As these actions indicate, Panama is doubling down on its efforts to strengthen its corruption enforcement capabilities. Time will tell whether its partnership with the U.S. government and recent high-profile arrests will lead to greater scrutiny of entities doing business in the country.



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